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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 197

HAROLD Z. KAPLAN, Shareholder in, suing derivatively for and on behalf of all shareholders for the benefit of: ONE WILLIAM STREET FUND, INC., a Maryland corporation, ENERGY FUND INC., a Delaware corporation, THE DOMINICK FUND, INC., a Delaware corporation, CHEMICAL FUND, INC., a Delaware corporation; and HAROLD Z. KAPLAN and FREDERICK L. DUNN, DANIEL B. DUNN, CHARLOTTE F. DUNN and NANCY L. DUNN, Minors, by next friend and parent, LILIA DUNN, Shareholders in, suing derivatively for and on behalf of all shareholders for the benefit of: THE LEHMAN CORPORATION, a Delaware corporation,

Petitioners,

vs.

LEHMAN BROTHERS, a partnership; GOODBODY & CO., a partnership; DOMINICK & DOMINICK, INCORPORATED, a corporation; UNKNOWN MEMBER ORGANIZATIONS OF THE NEW YORK STOCK EXCHANGE TRANSACTING BROKERAGE BUSINESS FOR CHEMICAL FUND, INC. and other Defendant-Funds; PAINE, WEBBER, JACKSON & CURTIS, a PARTNERSHIP; THE NEW YORK STOCK EXCHANGE, ONE WILLIAM STREET FUND, INC., a Maryland corporation; ENERGY FUND INC., a Delaware corporation; THE DOMINICK FUND, INC., a Delaware corporation; CHEMICAL FUND, INC., a Delaware corporation,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

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PETITIONERS' REPLY BRIEF

I.

PRELIMINARY STATEMENT

The able and vigorous efforts made by Respondents to defend the District Court's opinion[1] have in reality only emphasized the necessity for this Court's scrutiny of the issues presented by granting the pending petition. The Respondents' brief significantly omits any reference or analysis of three controlling decisions cited by Petitioners, (one of which was decided by the same Court after its decision in *Silver* v. *New York Stock Exchange,* 373 U.S. 341).[2] All three cases deal with the crucial issue of implied immunities under the antitrust laws. It is the judgment of the Respondents that this Court's opinion in *Silver* v. *New York Stock Exchange, supra,* once and for all resolved any questions which might arise with regard to the effect of antitrust law, policy and enforcement upon the self-regulatory rules of the Exchange. Petitioners submit that as a consequence of this approach the Respondents have failed to meet or to answer the central thrust of the Petition for Certiorari.

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[1] The Circuit Court's opinion in the instant case is summary to the point of openly inviting this Court's immediate attention to the vital issues presented.

[2] *United States* v. *Philadelphia National Bank,* 374 U.S. 321 (1963); *Pan American World Airways, Inc.* v. *United States,* 371 U.S. 296 (1963); and *California* v. *Federal Power Comm.,* 369 U.S. 482 (1962). It is interesting to note that in rendering its opinion the District Court cited only two cases, *Silver, supra* and *Board of Trade of Kansas City* v. *United States,* 314 U.S. 534 (1942). The Court of Appeals saw no necessity to look any further than *Silver, supra.*

II.

THE RESPONDENTS HAVE FAILED TO DEMONSTRATE THAT THE SILVER CASE IS DISPOSITIVE OF THE ISSUES PRESENTED BY THE PETITION

The Respondents' essential contention is that the District Court and the Court of Appeals properly rested their determinations on *Silver* v. *New York Stock Exchange,* 373 U.S. 341 (1963) "which settled the question of the scope of the antitrust exemption accorded to a national securities exchange." (Br. in Opp., p. 5). Respondents then set forth their interpretation of *Silver:*

> The Court pointed out that although the Exchange Act contains no express exemption from the antitrust laws and its regulatory scheme is not sufficiently pervasive to create total exemption as to all exchange activities, nevertheless repeal of the antitrust laws *is* to be regarded as implied where a particular instance of exchange self-regulation falls within the scope and purposes of the Exchange Act and is subject to SEC power of review and revision (373 U.S. at 357, 360-61). (Br. in Opp., p. 5.) (Emphasis supplied.)

This Court did not state that antitrust immunity is to be implied, rather the Court stated that:

> . . . particular instances of exchange self-regulation which fall within the scope and purposes of the Securities Exchange Act *may* be regarded as justified in answer to the assertion of an antitrust claim. *Silver* v. *New York Stock Exchange, supra,* at page 361. (Emphasis supplied.)

Further, the opinion set forth the foregoing observation only after carefully emphasizing the necessity for watchful judicial application of established antitrust principles on an *ad hoc* basis. Then the Court specifically warned of the danger of any implied re-

peals of the Sherman Act and further emphasized the importance of a meaningful consideration and application of the doctrine of pervasiveness. *Silver, supra,* at page 373.

Respondents virtually ignore these warnings as being unnecessary. In light of Respondents' failure to even comment on *United States* v. *Philadelphia National Bank,* 374 U. S. 321 (1963) in which this Court expanded and emphasized the warnings in question, Respondents' argument on "pervasiveness" can only be viewed as conclusions unsupported by any careful or detailed analysis. (Br. in Opp., pp. 12-13.)

Admittedly, Congress has not provided Section 19(b)(9) with any express statutory immunization from the antitrust laws. In the *Philadelphia Bank* case, *supra,* there is an expanded restatement of the admonishments set forth in the *Silver* case which must be observed in situations where the regulatory statute under consideration contains no express immunity.

> Repeals of the antitrust laws by implication from a regulatory statute are *strongly disfavored.* (*United States* v. *Philadelphia National Bank, supra,* at page 351). (Emphasis supplied.)

To emphasize and clarify the importance of this principle, this Court employed as examples two recent cases, *Pan American World Airways, Inc.* v. *United States,* 371 U.S. 296 (1963), and *California* v. *Federal Power Comm.,* 369 U.S. 482 (1962).[3]

The first case, *Pan American, supra,* was chosen by this Court to illustrate that the C.A.B. had been given

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[3] See also, *United States* v. *First City National Bank of Houston,* — U.S. —, 18 L.ed.2d 151 (1967); *Carnation Company* v. *Pacific Westbound Conference,* 383 U.S. 218 (1966).

broad powers to enforce the *competitive standard clearly delineated* by the Civil Aeronautics Act and to immunize a variety of transactions from the antitrust laws. The statutory authority was found to be sufficiently *pervasive* to prevent the application of the Sherman Act to facts constituting the *precise ingredients* of a case subject to the Board's broad *regulatory* and *remedial* powers.

The second case, *California* v. *Federal Power Comm., supra,* was presented as an example of a case at the opposite end of the spectrum.

> In the California case, on the other hand . . . the FPC's approval of a merger did not confer immunity from § 7 of the Clayton Act, even though . . . the agency had taken the competitive factor into account in passing upon the merger application. *United States* v. *Philadelphia National Bank, supra,* at page 351.

This decision was explicitly based upon a determination by the Court that " 'there is no *pervasive regulatory scheme' including the antitrust laws* that has been entrusted to the Commission." *California* v. *Federal Power Commission, supra,* at p. 485. (Emphasis supplied.)

Similarly, this Court in *Philadelphia National Bank; supra,* at page 351, found that although the Comptroller was required to consider the effect upon competition in passing upon appellees' merger application, the statute granting such power did not set forth any particular weight to be given such a factor. Further, unlike the FPC procedure, the Comptroller was not even required to, and indeed did not, hold a hearing before approving the application, which is a remarkably similar situation to the case at bar.

Just as this Court found that the range and scope of the administrative powers under the Bank Merger Act bear little resemblance to those involved in the *Pan American* case, the instant case provides even less of a similarity.[4]

The Respondents' analysis of the *Silver* case, *supra,* aside from avoiding the matter set forth above, is significantly incomplete. (See Br. in Opp., pp. 5-7). No mention is made of the *threshold question presented* which was clearly recognized in that case. Specifically, is it *possible* to make "an analysis which reconciles the operation of both statutory schemes with one another rather than *holding* one *completely ousted.*" *Silver* v. *New York Stock Exchange, supra,* at page 400. (Emphasis supplied.) Thus, there was a rearticulation of the controlling tenets of *United States* v. *Borden Co.,* 308 U.S. 188, 198 (1939) which holds that if there are "two acts upon the same subject, the rule is to give effect to both if possible."

There was no effort by the Courts below to even attempt a resolution of the threshold question. In this regard, the language employed by the Supreme Court in *Takao Ozawa* v. *United States,* 260 U.S. 178, 194 (1922) is particularly appropriate.

> It is the duty of this Court to give effect to the intent of Congress. Primarily this intent is as-

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[4] Respondents' emphatic reliance upon the *Silver* case as a holding dispositive of issues in the instant case, is aimed at sidestepping the critical issues regarding the lack of pervasiveness of the SEC rate review. There *has never been* an SEC rate hearing and there is no rate record. Thirty-three years have passed and the SEC has never defined "'reasonable rates'' or articulated the criteria applicable to the definition, nor has it calculated or compiled adequate data or even prescribed the accounting principles applicable to such data. This has resulted in the New York Stock Exchange and its members fixing minimum rates completely of their own choosing.

> certained by giving the words their natural significance, but if this leads to an unreasonable result, plainly at variance with the policy of the legislation as a whole, we must examine the matter further. We may then look to the reason of the enactment . . ."

Once the intent of the legislation under consideration is determined, an implied exemption from the antitrust law, if recognized at all, may be created only to the extent that it is essential in order to achieve the statutory purposes of the regulatory statute.

The primary and overriding purpose of the SEC Act of 1934 was clearly to *protect investors.* In this context, the purpose of Section 19(b)(9) was to protect the investing public from *unreasonably high* brokerage commission rates.[5] Clearly the buying and selling of securities is not a public utility nor a legalized monopoly. There is no reason to give wider scope to the statutory language involved than is required by the obvious Congressional purpose, i.e., to protect investors.

In this regard the Senate Report on the final bill stated:

> The Commission is empowered, after an exchange has failed to adopt rules governing the conduct of business by its members which *the Commission deems necessary for the protection of investors,* to order such adoption. Thus the initiative and responsibility for promulgating regulations per-

[5] The Maloney Act specifically prohibits the fixing of any schedule of prices, the imposing of any schedule or the fixing of minimum rates of commission (15 U.S.C. § 78o-3(b)(8)). Thus, it seems clear that Congress was keenly aware of the relation to the antitrust laws to the securities business and only in the case of the Maloney Amendment did Congress see fit to provide any exemptions (15 U.S.C. § 78o-3(n)). See also *United States* v. *Morgan,* 118 F.Supp. 621, 697 (S.D. N.Y. 1953).

taining to the administration of their ordinary affairs remain with the exchanges themselves. It is only where they fail adequately to provide protection to investors that the Commission is authorized to step in and compel them to do so. [S. Rep. No. 792, 73 Cong., 2d Sess., p. 13 (1934)]. (Emphasis supplied.)[6]

The section in question, 19(b)(9), should have been construed in a manner that would give full force to the Congressional purpose but which would avoid any unnecessary conflict with the Sherman Act. The failure of the Courts below is even more striking in light of the fact that such a construction would have avoided the sweeping repeal of the Sherman Act.

Even in the situation where Congress has granted an express exemption from the antitrust laws,[7] the manner in which the exemption is employed is strictly construed.[8] For example, the Capper-Volstead Act provides an express exemption to agricultural cooperatives from antitrust laws. Nonetheless, this Court in *Maryland and Virginia Milk Prod. Assoc.* v. *United States,* 362 U.S. 458, 468 (1960), asserted that to the extent that activities of the cooperative were outside

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[6] It is to be noted that the SEC in its Amicus Brief before the Court of Appeals chose to quote in full this same segment of the report.

[7] See, for example, the Miller-Tydings Act, 15 U.S.C. 1, the McGuire Act, 15 U.S.C. 45(2)-45(6), the Robinson-Patman Act, 15 U.S.C. 13(a), the Marine Insurance Association Act, 46 U.S.C. 885, the Interstate Commerce Act, 49 U.S.C. 5(11), the Webb-Pomerene Act, 15 U.S.C. 51-2 et seq., and the Capper-Volstead Act, 7 U.S.C. 291-2.

[8] *United States* v. *Borden Co., supra; Georgia* v. *Pennsylvania Railroad Co.;* 324 U.S. 439 (1945); *U.S. Alkali Ass'n.* v. *United States,* 325 U.S. 196 (1945); *United States* v. *E. I. DuPont De Nemours,* 351 U.S. 377, 388-389 (and note 14) (1956).

the legitimate objects of an agricultural cooperative, the Act did not immunize such activities from the operation of the antitrust law.[9]

Similarly, the dissenting opinion in *Silver* recognized that the antitrust laws would have application to Exchange practices if it were shown that the Exchange conspired with outsiders, or if it attempted to use its power to monopolize. Likewise, individual members of the Exchange would be liable if it were shown that they had conspired to use the Exchange's machinery for the purpose of suppressing competition.[10] See dissenting opinion *Silver* v. *New York Stock Exchange, supra,* at 371, footnote 5.

The Court of Appeals found, without any in-depth analysis of the antitrust considerations, that the fixing of minimum rates is *one method of* regulating commission rates (see Petition for Cert. App. 11-a). Certainly, the fixing of maximum rates is *another method* of regulation—one which is in accord with the spirit, intent and purpose of both the SEC Act and the antitrust law. To permit the fixing of maximum rates by

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[9] The District Court below carefully avoided the spectre of predatory practices, *Cf.* allegation Plaintiffs' "Amended Complaint" para. 59, in which it is alleged that the course of conduct engaged in amounted to a fraud and deceit upon the investing public. Compare, Petition at pp. 23-24 wherein the members' practice of "give ups" is discussed.

[10] Compare paragraph 53 of Petitioners' amended complaint filed July 16, 1966 which indicates that the complained of practice eliminates competition and restrains interstate trade and commerce in violation of Section 1 of the Sherman Act. See Petition pp. 11-12 setting forth the manner in which Commission rates are fixed by secret vote of the members. See also, Petition pp. 11-12 which describes the extant monopoly power whereby 7% of the total membership receive 50% of all commissions from public trading.

the Exchange would avoid needless conflict with the antitrust laws. The Petitioners, in suggesting this proposal, are not withdrawing any argument that the fixing of minimum rates is illegal *per se*. It is beyond doubt that the *Silver* case, *supra,* cannot be read to justify the pernicious and excessively stifling anticompetitive effects of minimum price fixing—which are manifestly illegal *per se*. The fixing of maximum rates however is clearly, one instance of the "particular instances of exchange self-regulation which fall within the scope and purposes of the Securities Exchange Act [which] may be regarded as justified in answer to the assertion of an antitrust claim. *Silver* v. *New York Stock Exchange, supra,* at page 361.

In concluding Petitioners' Reply to Respondents' analysis of the *Silver* decision, *supra,* it must be emphasized that there is not even a remote basis for concluding that this Court was authorizing a jettisoning or ignoring of established antitrust principles. The *Silver* case, on the contrary, carefully read emphasizes the importance of such considerations. The Court recognized that even where the avowed purpose was to protect the investing public from "bucket shop" operations, implied immunity from the antitrust laws *was not granted because of potential anticompetitive dangers involved which were in fundamental conflict with antitrust policy. Silver* v. *New York Stock Exchange, supra,* at page 358.

In light of the obvious misreading of the *Silver* case, *supra,* which necessitates the present controversy, Petitioners respectfully feel constrained to submit to this Court's attention the dissenting opinion of Circuit Judge Waterman in *Silver* v. *New York Stock Ex-*

change, 302 F.2d 714 (1962) which was adopted as the basis of Mr. Justice Clark's concurring opinion in *Silver, supra,* at page 367.[11]

III.

THE PRINCIPLES ARTICULATED IN THE SILVER AND THE PHILADELPHIA NATIONAL BANK CASES CLEARLY WARRANT THE COURT GRANTING CERTIORARI IN THIS CASE.

On pages 7-14 of Respondents' brief in opposition, it is contended that Petitioners have attempted to circumvent the principles of the *Silver* case in order to obtain certiorari. The Respondents present six basic points in an attempt to support this argument. The Petitioners in the succeeding paragraphs will present their arguments in reply to these points.

A. Petitioners' Reply to Respondents' Arguments Concerning the Claim That Existing Rates Are Unreasonable, The Standard of "Reasonable Rates" and The Alleged Lack of "Pervasive" SEC Regulation.

Respondents set forth their view of the significance of Petitioners' contention that the rates challenged are unreasonable on pages 8 and 9 of their brief. In a related vein, Respondents set forth an argument purporting to demonstrate that the SEC regulatory authority is sufficiently pervasive to justify the blanket immunity created by the Courts below, even though

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[11] Circuit Judge Waterman noted as significant, the presence of explicit exemptions in certain parts of the statute and concluded that this should make us hesitate to find a Congressional intention to create implicit exemptions elsewhere in the same legislation. Note also reference to the relevance of Judge Medina's opinion in *United States* v. *Morgan,* 118 F.Supp. 621 at 697 (S.D. N.Y. 1953) in which was set forth the statutory scheme of the Securities Act of 1933 and 1934. See 302 F.2d at 722.

there was no attempt to make a detailed examination into the question of pervasiveness as is required in order to sustain such a determination. (Br. in Opp., pp. 12-13).

One fundamental error permeates these arguments. Such error arises from an attempt by the Respondents to relegate the position of the Petitioners solely to an economic context, when in fact, the Petitioners have presented a unified question which is composed of both antitrust and economic considerations. (See Pet., pp. 28-31). In so doing the Respondents have failed to meet either aspect of the problem adequately.

The record is clear. The Petitioners' basic argument has always been directed toward the fundamental and inherent evil created by the fixing of *minimum* brokerage commissions. The amended complaint filed in this case alleged specifically that the Defendant violated the Sherman Act by fixing minimum commission rates. On appeal, it was attempted to be demonstrated the *per se* nature of minimum rates which were patently inimical to the antitrust law. At no time have the Petitioners waivered in the relief sought, i.e. damages as a consequence of the illegal acts.

From the approach taken by Respondents in developing the three points under consideration, it is apparently felt to be unnecessary to meet the test suggested by this Court in *Silver,* i.e. are the practices challenged " 'inconsistent with just and equitable principles of trade' and rules regulating such dealing are indeed just and adequate to insure fair dealing and to protect investors." Respondents also avoid the guiding principles suggested in *Silver,* i.e., repeal is to be regarded as implied only if necessary to make the Se-

curities Exchange Act work, and even then only to the minimum extent necessary.

Irrespective of these fundamental considerations pointed out above, the Respondents assert that the *Silver* decision is dispositive of the question raised by Petitioners, i.e. the fixing of minimum brokerage commission fees. Yet nowhere in their brief do the Respondents attempt to explain how brokerage rates are fixed or how such rates protect the investing public. Merely because the fixing of minimum brokerage commissions may be argued to be of long standing nature is not a controlling factor to be considered. Compare, for example, *United States* v. *National Ass'n of Real Estate Boards,* 84 F.Supp. 802 (D.C.D.C. 1949) wherein the trial court strained to apply a rule of reason to minimum brokerage commissions which were of an open and long standing nature and which the trial judge felt should be exempt from the *per se* rule of illegality by virtue of the purported salutory purposes and aims of such practices.

The *Real Estate Boards* case, *supra,* presents a striking factual parallel to the case at bar. The Board's code of ethics required that brokers maintain the standard rates of commission adopted by the Board and no business should be solicited at lower rates. The practice of fixing such minimum rates was, as noted, open and notorious and of a long standing nature. In addition, as the practice of fixing brokerage fees existed in the District of Columbia, it was in the context of a regulated industry by virtue of a federal statute 50 Stat. 787 dealing with real estate:

> To define, regulate, and license real-estate brokers, business chance brokers, and real-estate salesmen; to create a Real Estate Commission in the District

of Columbia; to protect the public against fraud in real-estate transactions; and for other purposes. (50 Stat. 787).

Nonetheless, the Supreme Court condemned such practice and categorically rejected any erosion of the *per se* test of illegality in the fixing of minimum brokerage fees. *United States* v. *National Association of Real Estate Boards,* 339 U.S. 485 (1950).[12]

B. Petitioners' Reply to Respondents' Argument Concerning the Change From "Uniform" to "Reasonable" Rates.

The Respondents attempt to eliminate the significance of the change from "uniform" to "reasonable" rates in the legislation in question. However, Respondents cannot escape the patent fact that "reasonable" rates must be competitive rates to the greatest exent permissible which is consonant with the accomplishment of the purposes of the Securities Exchange Act and still accommodate it to the maximum extent possible with the aims and purposes of the antitrust law. As was spelled out in detail previously, the purpose of the Securities Exchange Act of 1934 was to protect the investing public. See p. 7, *supra.* Certainly it cannot be seriously argued that the purpose of the Securities Exchange Act of 1934 was to protect primarily brokers at the expense of the investing public.

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[12] Compare *United States* v. *Socony Vacuum Oil Co.,* 310 U.S. 150 (1940) wherein the Defendant attempted to seek refuge from the impact of a *per se* violation of the antitrust laws, i.e., price-fixing, with an offer of proof covering the background and operation of the National Industrial Recovery Act and Petroleum Code, the condition of the oil industry, the alleged encouragement, cooperation and acquiescence of the Federal Petroleum Administration in the buying program.

C. Petitioners' Reply to Respondents' Argument Concerning The Maloney Act Amendment.

Respondents seek to minimize the significance of the Maloney Act. It is contended that this Act merely reflects the Congressional desire to treat nationally registered securities and over-the-counter securities differently. It is argued that since there is no central exchange Congress was required to enact pervasive regulations. If this analysis is correct then the Congressional enactment must demonstrate what Congress believed to be the desired standard with regard to Exchange regulations in order to create a blanket immunity.

Congress in enacting the Maloney Act wrote into the law a standard of competition ". . . rules of the association are designed . . . to remove impediments to and perfect the mechanism of a free and open market; and are not designed to permit unfair discrimination . . . to impose any schedule of prices, . . . or fix minimum rates. . . ." [18] Congress in the Maloney Act wrote into the law with regard to over-the-counter exchanges competition in bold and pervasive terms. Certainly the same considerations must apply to nationally registered securities exchanges, for the impact on the investing public is much greater and the potential harm to be created by anything less than competitive market conditions is magnified.

Only after Congress had specifically spelled out in the law the competitive factors and standards to be observed in the conduct of these dealers did it feel safe to grant an express immunity from the antitrust law.

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[18] See footnote 5, *supra*.

D. Petitioners' Reply to Respondents' Argument That There Is a Remedy Outside the Antitrust Laws.

Respondents suggest that Petitioners' proper remedy lies under the Administrative Procedure Act. (Br. in Opp., pp. 13-14). This point is not well taken.

First, it flies in the face of the specific provision of the Securities Exchange Act of 1934 in which Congress expressly provided that the rights and remedies created under the Act were in addition to and not in derogation of all other existing rights. (See 15 U.S.C.A. 78bb)

Second, as pointed out in the Petition on page 47 the Administrative Procedure Act does not provide review for the failure of the administrative agency to perform acts falling within the agency discretion.

Lastly, it appears that the genesis of this suggestion may spring from the majority opinion of the Circuit Court in *Silver, supra.* On page 721, the Circuit Court seems clearly to suggest that one reason why immunity should be granted to the New York Stock Exchange was that Silver had an adequate remedy through a review necessarily implied under the circumstances but admitted "[t]hat the statute was silent on the question . . ." (Note the Circuit Court called attention to the Administrative Procedure Act § 10a, 5 U.S.C. § 1009(a) (1958)). Suffice it to say that this argument must be viewed to have been clearly rejected by the subsequent disposition of the controversy, i.e., the Court remanded the case for retrial under the antitrust laws. Compare, *United States* v. *Borden Co.*, 308 U.S. 188 (1939) in which the price fixing challenged was *discretionary* with the *Secretary of Agriculture*

and *he had not seen fit to exercise his powers.* Nonetheless it was held that an antitrust action could still be maintained.

CONCLUSION

The Courts below have failed to carefully apply the teachings of *Silver, supra,* to the extent that they are applicable to the instant matter. And further, in light of the gross misreading of the *Silver* decision jettisoning the well-established antitrust guidelines articulated by this Court in the *Philadelphia Bank* case, *supra,* it is respectfully submitted that the Petition for Certiorari be granted in order that the rights of the investing public to the protection of the antitrust laws be vindicated. This is, we believe, a case of first impression which vitally affects the thrust and application of the antitrust laws to a field of national importance to the investing public.

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APPENDIX

Section 28 of the Securities Exchange Act of 1934 (15 U.S.C. 78 bb (a))

"(a) The rights and remedies provided by this chapter shall be in addition to any and all other rights that may exist at law or in equity; but no person permitted to maintain a suit for damages under the provisions of this chapter shall recover, through satisfaction of judgment in one or more actions, a total amount in excess of his actual damages on account of the act complained of. Nothing in this chapter shall affect the jurisdiction of the securities commission (or any agency or officer performing like functions) of any State over any security or any person insofar as it does not conflict with the provisions of this chapter or the rules and regulations thereunder.

Section 15A, as amended, of the Securities Exchange Act of 1934 (15 U.S.C. 78 o-3(n))

If any provision of this section is in conflict with any provision of any law of the United States in force on June 25, 1938, the provision of this section shall prevail."